

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

David and Patricia Fleury

v.

Civil No. 03-cv-344-JM

Cassidy Water Conditioning, Inc.

O R D E R

Defendant moves to dismiss alleging that the claim is barred by New Hampshire's three year statute of limitations, citing N.H. RSA 508:4-I. In their objection plaintiffs rely on matters outside the pleadings to raise what is an equitable estoppel argument (even though plaintiffs have not articulated it as such). Pursuant to Fed. R. Civ. P. 12(b) the court notifies the parties that it intends to treat the matter as a summary judgment and dispose of it as provided in Rule 56. Defendant is to file any material pertinent to such a motion by Rule 56 within twenty (20) days from the date of this order. Plaintiffs are to respond pursuant to Rule 56 within twenty (20) days thereafter.

Since Fed. R. Civ. P. 15(c) and the substantial body of federal case law controls, as opposed to New Hampshire Superior Court Rules and state case law, it would be helpful if the parties (1) argued the correct procedural law and (2) factually

and legally addressed the applicability of the doctrine of equitable estoppel.

SO ORDERED.

James R. Muirhead
United States Magistrate Judge

Date: June 9, 2005

cc: Douglas N. Steere, Esq.
Steven L. Maynard, Esq.